

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**RAYMOND HENRY HALE,**

Petitioner,

v.

**STEVE FRANKE,**

Respondent.

No. 3:11-cv-00811-CL

OPINION AND ORDER

**MOSMAN, J.,**

On May 23, 2013, Magistrate Judge Clarke issued his Report and Recommendation (“R&R”) [37] in the above-captioned case, recommending that I deny the Petition for Writ of Habeas Corpus [3] and that I decline to issue a certificate of appealability. Petitioner filed objections [39] to which respondent did not respond.

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of

the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Clarke's recommendation, and I ADOPT the R&R [37] as my own opinion. I deny petitioner's request for a certificate of appealability because he has not "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 28th day of June, 2013.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Judge